

ORIGINAL NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

2009 OCT -9 A 10:16

Arizona Corporation Commission

DOCKETED

OCT -9 2009

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

DOCKETED BY

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In the matter of:

REX G. WHEELER, JR., a single man,

Respondent.

DOCKET NO. S-20705A-09-0482

NOTICE OF OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER TO
CEASE AND DESIST, ORDER FOR
RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES AND FOR
OTHER AFFIRMATIVE ACTION

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondent REX G. WHEELER, JR. has engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

RESPONDENT

2. Respondent REX G. WHEELER, JR. ("WHEELER") is a single man and a Utah resident. At all times relevant, WHEELER was not registered as a securities salesman or dealer by the Commission.

III.**FACTS**

3. From approximately April 2006 to September 2007, WHEELER sold unregistered securities in Arizona to approximately eighteen Arizona residents in the form of investment contracts and/or notes.

4. At all times relevant, WHEELER represented to investors that he was in the business of: (a) real estate consulting; (b) buying and selling of leases of real property with options to purchase; and (c) real estate finance.

5. At all times relevant, WHEELER represented to investors that he would pool their investment money together to finance a "Hard Money Fund" ("HMF") that he had created (the "HMF Investment(s)"). WHEELER further represented that he would use the HMF Investment money to fund real estate loans made to a high-end golf resort holding company (the "Golf Company") so that it could develop and/or acquire "exclusive" golf courses and related or attached "high-end" residences throughout the United States.

6. WHEELER represented to investors that the HMF Investments would pay a return of eighteen to twenty-four percent per year, with interest paid out on a monthly basis and the eventual return of their principal at the conclusion of the investments.

7. The HMF Investments had an initial term of nine months. Thereafter, investors could continue their investments, or terminate them by providing WHEELER with three months written notice.

8. The HMF Investments were documented, in part, by unsecured promissory notes signed by WHEELER.

9. WHEELER managed all aspects of the HMF Investments and, without limitation: (a) formed, funded and managed the HMF; and (b) negotiated the terms and conditions of the Golf Company loans funded with investor money. At all times relevant, WHEELER emphasized that the

1 success of the HMF Investments would depend on his superior real estate management knowledge
2 and skill.

3 10. WHEELER represented to investors that the HMF Investments would be secured by
4 first-position deeds of trust recorded in their favor on the real estate or improvements leased,
5 developed and/or purchased by the Golf Company with investor money (the "Collateral").

6 11. Unbeknownst to investors, their HMF Investments were not secure because: (a) as
7 discussed below, WHEELER did not loan money to the Golf Company, or obtain any Collateral
8 for such loans; and (b) Wheeler did not assign investors a security interest in any real estate or
9 property associated with the Golf Company or HMF Investments.

10 12. WHEELER also represented to investors that the HMF Investments were safe due
11 to the superior industry reputation of the Golf Company and its "competent and trustworthy
12 management."

13 13. WHEELER failed to inform investors that their HMF Investments were not safe
14 because: (a) any Collateral underlying the Golf Company loans would be subject to unpredictable
15 recreational golf and resort market fluctuations and/or declines; (b) the ability of WHEELER's
16 borrower to repay loans funded with investor money could be negatively impacted by
17 unpredictable, expensive and time consuming civil and bankruptcy litigation; and (c) investors
18 could lose all or a vast portion of their investments, in part, because WHEELER did not assign
19 investors a security interest in any Collateral associated with the Golf Company or HMF
20 Investments.

21 14. WHEELER caused the Arizona investors to wire their investment money into bank
22 accounts owned and controlled by WHEELER. Unbeknownst to his investors, WHEELER did not
23 use the HMF Investment money to fund real estate loans to the Golf Company. Rather,
24 WHEELER used HMF Investment money to make unsecured loans to an individual named Weston
25 Wade Sleater, whereby Mr. Sleater agreed to pay WHEELER interest at the rate of forty-eight
26 percent per annum (the "Sleater Loans").

1 15. Unbeknownst to his investors, and prior to making the Sleater Loans, WHEELER
2 extensively commingled investor money within the accounts of his other real estate companies (the
3 "Commingled Money") including: (a) Bedrock Marketing, L.L.C., a Utah limited liability
4 company; (b) The Ockham Group, L.L.C., a Utah limited liability company; (c) Enlightened
5 Management, L.L.C., a Utah limited liability company; and (d) Property Certain, L.L.C., a Utah
6 limited liability company (the "WHEELER Companies"). WHEELER further failed to disclose to
7 investors that he used the Commingled Money, in part, to support his separate real estate
8 businesses and/or to pay for personal expenditures.

9 16. At present, WHEELER and the WHEELER Companies are debtors in voluntary,
10 consolidated Chapter 7 bankruptcies in which the Arizona investors are unsecured creditors, and
11 the HMF Investments and the Sleater Loans are being litigated (the "Bankruptcy"). (*See, In re*
12 *Wheeler, et al.*, No. 08-20300, U.S. Bankruptcy Court, District of Utah, Central Division (Hon.
13 William T. Thurman)). WHEELER's amended Bankruptcy schedules claim assets of
14 approximately \$6,151,000 and liabilities of \$18,000,000. WHEELER was granted a discharge in
15 the Bankruptcy on or about June 16, 2008.

16 17. Mr. Sleater failed to repay the Sleater Loans made to him by WHEELER and
17 funded, in part, with investor money. On or about April 8, 2009, the Bankruptcy Trustee obtained
18 an adverse judgment against Mr. Sleater for non-payment of the Sleater Loans totaling
19 \$11,517,456 (Adversary No. 08-20308). To date, no money has been collected on the adverse
20 judgment resulting from non-payment of the Sleater Loans.

21 18. WHEELER sold approximately twenty HMF Investments totaling approximately
22 \$2,468,548.70.

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IV.

VIOLATION OF A.R.S. § 44-1841

(Offer or Sale of Unregistered Securities)

19. From on or about April 2006 to September 2007, WHEELER offered or sold securities in the form of investment contracts and/or notes, within Arizona.

20. The securities referred to above were not registered pursuant to Articles 6 or 7 of the Securities Act.

21. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

22. WHEELER offered or sold securities within Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

23. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

24. In connection with the offer or sale of securities within or from Arizona, WHEELER directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. WHEELER's conduct includes, but is not limited to, the following:

A. Misrepresenting to investors that he would use their HMF Investment money to make secured loans to the Golf Company, when he: (a) used investor money to

1 make the unsecured Sleater Loans, which are in default; and (b) he commingled
2 investor money within the accounts of the WHEELER Companies and, in some
3 instance, used such Commingled Money to support his other real estate businesses
4 and/or for personal expenditures;

5 B. Misrepresenting to investors that their HMF Investments would be secured by first-
6 position deeds of trust recorded in their favor on the Collateral acquired by the Golf
7 Company with investor money, when the HMF Investments were not secure
8 because: (1) WHEELER did not loan any money to the Golf Company and/or
9 obtain any Collateral for any such loans; and (2) WHEELER did not assign
10 investors a security interest in any Collateral associated with the Golf Company or
11 HMF Investments; and

12 C. Representing to investors that the HMF Investments were safe, while further failing
13 to disclose to them that the investments were not safe because: (a) the Collateral
14 underlying the Golf Company loans are subject to unpredictable recreational golf and
15 resort market fluctuations and/or declines; (b) the ability of WHEELER's borrower
16 to repay loans funded with investor money could be negatively impacted by
17 unpredictable, expensive and time consuming civil and bankruptcy litigation; and (c)
18 investors could lose all or a vast portion of their investments, in part, because
19 WHEELER did not assign investors a security interest in any Collateral associated
20 with the Golf Company or HMF Investments.

21 25. This conduct violates A.R.S. § 44-1991.

22 VII.

23 REQUESTED RELIEF

24 The Division requests that the Commission grant the following relief:

25 1. Order WHEELER to permanently cease and desist from violating the Securities Act
26 pursuant to A.R.S. § 44-2032;

2. Order WHEELER to take affirmative action to correct the conditions resulting from his acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order WHEELER to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036; and

4. Order any other relief that the Commission deems appropriate.

VIII.

HEARING OPPORTUNITY

WHEELER may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If WHEELER requests a hearing, he must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

IX.

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if WHEELER requests a hearing, he must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.


Additionally, the respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to Mike Dailey.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of the answering respondent or respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When the answering respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify that part or qualification of the allegation and shall admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

Dated this 9 day of October, 2009.


Matthew J. Neubert
Director of Securities